

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36575

STATE OF IDAHO,)	2010 Unpublished Opinion No. 348
)	
Plaintiff-Respondent,)	Filed: February 16, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
ROBERT LEE FAULKNER,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. John P. Luster, District Judge.

Order relinquishing jurisdiction, affirmed; order granting I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge; GUTIERREZ, Judge;
and MELANSON, Judge

PER CURIAM

In this case we are asked to determine whether the district court abused its discretion in refusing to grant probation following a period of retained jurisdiction. We are also asked to review the district court's order granting an I.C.R. 35 motion for reduction of sentences. We affirm.

Robert Lee Faulkner was originally charged with two counts of rape. Pursuant to a plea agreement, Faulkner pled guilty to two counts of felony injury to a child. I.C. § 18-1501(1). Following his pleas, Faulkner was sentenced to concurrent unified terms of six years, with minimum periods of confinement of one and a half years. The district court suspended the sentences and placed Faulkner on probation.

Faulkner violated the terms of his probation, was ordered to serve some additional jail time, but was reinstated on probation. Following admissions to violation of his probation a second time, the district court revoked Faulkner's probation, but retained jurisdiction for 180 days, and Faulkner was sent to participate in the rider program.

At the conclusion of the retained jurisdiction, the district court relinquished jurisdiction. Faulkner filed an I.C.R. 35 motion for reduction of his sentences. The district court granted Faulkner's motion and reduced the sentences to concurrent unified terms of six years, with minimum periods of confinement of one year. Faulkner appeals, claiming that the district court erred by refusing to grant probation and that his reduced sentences are excessive and constitute an abuse of discretion.

We note that the decision to place a defendant on probation or whether, instead, to relinquish jurisdiction over the defendant is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. *State v. Hood*, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. We hold that Faulkner has failed to show that the district court abused its discretion.

We note that a lower court's decision to grant or deny a Rule 35 motion will not be disturbed in the absence of an abuse of discretion. *State v. Villarreal*, 126 Idaho 277, 281, 882 P.2d 444, 448 (Ct. App. 1994). Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established. *See State v. Hernandez*, 121 Idaho 114, 822 P.2d 1011 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 680 P.2d 869 (Ct. App. 1984); *Toohill*, 103 Idaho 565, 650 P.2d 707. Since the district court later reduced Faulkner's sentences, pursuant to his Rule 35 motion, we will only review his modified sentences for an abuse of discretion. *See State v. McGonigal*, 122 Idaho 939, 940-41, 842 P.2d 275, 276-77 (1992). Applying the foregoing standards and having reviewed the record, we conclude that the district court did not abuse its discretion in granting the Rule 35 motion and imposing the reduced sentences.

The order of the district court relinquishing jurisdiction; Faulkner's concurrent unified sentences of six years, with minimum periods of confinement of one year; and the district court's order granting Faulkner's Rule 35 motion are affirmed.